



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/170598

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2015, under Wis. Admin. Code §HA 3.03, to review a decision by the Milwaukee Enrollment Services in regard to FoodShare benefits (FS), a hearing was held on January 12, 2016, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly determined that the petitioner was overpaid \$511.00 in FoodShare benefits while a previous appeal was pending.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

|

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]

Milwaukee Enrollment Services
1220 W Vliet St, Room 106
Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:

Corinne Balter
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The agency sent the petitioner a notice stating that her FoodShare (FS) benefits were ending effective September 1, 2015.

3. On August 4, 2015 the Division of Hearings received the petitioner's Request for Fair Hearing regarding the discontinuation of her FS benefits. The petitioner requested that her FS benefits be continued pending the outcome of her appeal.
4. A hearing was held on October 7, 2015. On October 30, 2015 Administrative Law Judge David Fleming issued a written decision finding that the discontinuation of the petitioner's FS benefits effective September 1, 2015 was correct.
5. The petitioner was issued \$511 in FS benefits in September 2015. The agency did not issue the petitioner FS benefits in October 2015.
6. On November 30, 2015 the agency sent the petitioner a notice stating that she was overpaid \$511 in FS benefits for period from September 1, 2015 to September 30, 2015.
7. On December 7, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

DISCUSSION

The Federal regulations require States to establish an overpayment claim against any household that received more FS benefits than the household was entitled to receive. 7 *Code of Federal Regulations (CFR) § 273.18(b)*, see also *FoodShare Wisconsin Handbook (FSWH)*, §7.3.2. FS recipients may request a fair hearing if the recipients' FS benefits are reduced or terminated. *FSWH*, §6.4.1. If the recipient requests the fair hearing prior to the reduction or termination of his or her FS benefits, the benefits can be continued pending the outcome of the appeal. *Id.* In the event that the recipient loses the appeal, there is a FS overpayment because the household receives more FS benefits than the household is entitled to through the continuation of benefits. *FSWH*, §7.3.2.

Claim preclusion (formerly known as res judicata) requires a final judgment on the merits in a prior proceeding. Issue preclusion (formerly known as collateral estoppel) requires that the issue of law or fact to be precluded to have been actually litigated and decided in a prior action. *Northern States Power Co. v. Bugher*, 189 Wis.2d 541, 550-551, 525 N.W.2d 723 (1995). Under claim preclusion, "a final judgment is conclusive in all subsequent actions between the same parties (or their privies) as to all matters which were litigated or which might have been litigated in the former proceedings ... claim preclusion is designed to draw a line between the meritorious claim on the one hand and the vexatious, repetitious and needless claim on the other hand." *Ibid.*, p. 550.

The petitioner sought to re-litigate the issues presented and decided by ALJ Fleming at her previous fair hearing. I have no jurisdiction to address those issues. The only issue in front of me is whether the overpayment is correct. The petitioner's benefits were continued pending the outcome of her appeal. The petitioner lost her appeal. The agency is now recouping the benefits provided to the petitioner pending the outcome of the appeal. This is the correct action.

CONCLUSIONS OF LAW

The agency correctly determined that the petitioner was overpaid \$511.00 in FoodShare benefits while a previous appeal was pending.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 20th day of January, 2016

\sCorinne Balter
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 20, 2016.

Milwaukee Enrollment Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability